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any such claims, or cause them to be delivered to defendants, or cause them to be employed, and that since the signing of the agreement no such claims have come into his hands through plaintiff's exertions; avers a belief that plaintiff was not agent for such claims, and that his representation was fraudulent; admits that the claims of Cogan and Moran were prosecuted successfully, and that he received between \$3000 and \$4000 as fees in those cases.

The answer thus admits the receipt of between \$3000 and \$4000, which the agreement expressly provided should be divided equally between the parties. It is not pretended that any larger sum than \$500 has been paid to the plaintiff. The pleadings show an amount of about \$1500 due to the plaintiff, subject to an account for expenses, and upon these pleadings a decree was necessarily ordered for the plaintiff.

If there is a claim of fraud it must be proved, which is not here attempted.

Excluding as irregular the deposition in which the plaintiff establishes his case, it is not a subject of reasonable doubt that upon the hearing on bill and answer, and on the motion for a rehearing, in which both parties appeared, the decree given was properly rendered. The decree expressly states that it is made upon the bill and answer, without regard to the deposition, which was irregularly taken.

Decree affirmed.

Mr. Enoch Totten and Mr. Thomas Wilson for appellant. Mr. J. M. Carlisle and Mr. J. D. McPherson for appellee.

STATEN ISLAND RAILWAY COMPANY v. LAMBERT.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 772. October Term, 1877.—Decided January 7, 1878.

If in an action in a state court to recover damages under a state statute for a death caused by a collision on navigable waters within the State, no Federal question is raised during the trial, this court cannot take jurisdiction in error.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The steamboat Middletown, owned by the plaintiff in error, (defendant below,) on her passage from Staten Island to New York ran into and sank a small sail-boat lying at anchor, thereby causing

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the death of Charles Lambert. This action was brought by the administratrix of Lambert, under a statute of the State, to recover damages for his death, upon the ground that it resulted from the carelessness and negligence of those engaged in navigating the steamboat. In its answer the plaintiff in error denied the negligence complained of, and insisted that the accident happened through the fault of the decedent, but did not set up any claim of right, privilege or immunity under the navigation laws of the United States. The case as tried presented questions of fact alone, and, upon the motion to dismiss the complaint after the testimony was closed, the court was not asked to rule the law upon conceded facts, but to decide upon the effect of conflicting evidence. Certainly there was no such failure of proof on the part of the plaintiff below as to make it error in the court to refuse to take the case from the jury, and in the assignment of error which has been returned with the writ, in accordance with the requirements of sec. 997, Rev. Stat., no complaint is made of the instructions as given to the jury, or of the refusal to give any that were requested. It does not appear, therefore, that any Federal question was necessarily involved in the decision of the court below, or that any was in fact decided.

The motion to dismiss for want of jurisdiction is granted.

Mr. W. W. Goodrich for the motion. *Mr. Julian A. Davies* opposing.

SOUTHERN v. HAGOOD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF SOUTH CAROLINA.

No. 27. October Term, 1878. — Decided November 4, 1878.

This bill is dismissed because the evidence sent here fails to support the finding on which the bill was dismissed; and as grave constitutional questions were involved, it is remanded to the Circuit Court with power to allow amendments to the pleadings and take further proof.

THE case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This record shows clearly that the case was heard and decided below upon testimony which is not before us. The decree of dismissal is based entirely upon a finding, that the complainants were concluded by some judgment in a state court "to which Mr. Wesley